



MONTGOMERY COUNTY ETHICS COMMISSION

Advisory Opinion 08-02-003

Absent a waiver, an employee cannot be employed by any business that is regulated by the County agency with which the employee is affiliated. The Commission previously approved an outside employment request from an employee in the Department of Health and Human Services (DHHS) to operate an Internet business. This employee, whose duties include inspecting health care facilities, has discovered that one of her outside Internet clients is a facility she is scheduled to inspect this year. The Commission concludes that this employee cannot maintain this facility as a client of her outside employment so long as it is subject to regulation by her agency.¹

In 2000, the Commission approved this employee's request to engage in outside employment. The employee described this outside employment as an Internet business that would offer information on local services, news, and events. At the time, the employee did not have any inspection or regulation duties at DHHS.

In 2004 that changed. The employee transferred to another division where her duties include inspecting and regulating health care facilities (e.g., group home and assisted living facilities). Her job requires her to write reports based upon her inspection and prepare for any legal action necessary to enforce applicable regulations.

One of the clients of the employee's outside Internet business is a health care facility. The employee learned that she is scheduled to inspect that health care facility this year.

The employee cannot keep the health care facility as a client of her outside Internet business so long as that facility is subject to regulation by her agency. Section 19A-12(b)(1)(A) provides that, absent a waiver, an employee must not be employed by, or own more than one percent, of any business that is regulated by the County agency with which the employee is affiliated.² Assigning this facility to one of the employee's co-workers is insufficient because the ethics law forbids the employee's outside employment by the facility so long as it is subject to regulation by anyone in the employee's agency, not just the employee herself.

¹ The employee's supervisor asked for this advisory opinion. A supervisor may seek an advisory opinion for a subordinate under § 19A-7(a).

² The employee has not asked for a waiver.

Thus, the employee cannot maintain the health care facility as a client. By separate letter, the Commission will ask the employee to renew her application for outside employment. The Commission's outside employment regulation provides that if an employee approved for outside employment accepts another position within the department, that employee must reapply for outside employment approval with the department and the Commission.
COMCOR19A.06.02.06.3.

A handwritten signature in black ink, appearing to read "Antar C. Johnson", with a long horizontal flourish extending to the right.

March 7, 2008

Date

Antar C. Johnson, Chair